

Remarks/Arguments

Applicants provisionally elect, with traverse, the following amino acids for “F-E-D-C-B-A”:

A is cysteine;

B is β -cyclohexylalanine;

C is isoleucine;

D is leucine;

E is D-glutamic acid; and

F is aspartic acid.

Claims 12 and 21 were amended to focus on the elected E group being D-glutamic acid. Support for the amendment is provided in the application, for example, on page 13, line 8.

Claim 15 was canceled without prejudice to future prosecution and new claim 23 was added. Claim 15 was previously withdrawn from prosecution. New claim 23 provides two amino acid sequences (SEQ ID NO: 103 and 104). All the pending claims (claims 1-12, 14, and 16-23) read on the elected species.

Restriction Requirement

The restriction requirement argues that the application fails to disclose uses of the claimed species in combination with each other. As pointed out in the previous response, the application provides for combinations containing one or more species on pages 20, lines 17-19; page 21, line 14 to page 22, line 6; and page 23, lines 5-11. For example, the application on page 20, lines 17-19 states:

A fourth aspect of the invention provides a pharmaceutical composition with includes **one or more compounds** or derivatives according to **the first aspect**. [Emphasis added.]

The first aspect of the invention provides the Pep-A'-B'-C'-D' generic structure, subgeneric groups and different species (see page 5, line 25 to page 19).

The restriction requirement argues that the application does not enable the use of different species in combination. No support for the argument concerning enablement is provided in the restriction requirement. For example, the restriction requirement fails to discuss

factors generally looked at in determining enablement such as the level of skill in art, the predictability in the art, the degree of experimentation, or the examples provided in the application.

The examiner refers to the claims not specifically reciting a combination as support for the restriction requirement. The claims focus on compounds, compositions, and methods. Such claims do not exclude compound combinations.

The restriction requirement also argues that Wang et al. (U.S. Patent No. 5,639,594) allegedly anticipates a compound comprising Formula I (Pep-A'-B'-C'-D'). The anticipation argument is based on reference to "A' is a proline residue which is optionally substituted", being read to allow for A' to be glycine or apparently any amino acid or analog. Presumably, the examiner is applying the broadest reasonable interpretation to the claim.

It is respectfully submitted even if claim 1 is interpreted as indicated by the examiner, the restriction requirement fails to indicate where Wang et al. provides for functional descriptions specified in the claims. For the example, claim 1 indicates "Pep" is capable of binding HCV NS3 protease, and the bond between Pep and A is substantially uncleavable by HCV NS3 protease. No rationale is provided in the restriction requirement as to why the sequence referenced in Wang et al. inherently has such properties.

Sequence ID Number

The restriction requirement indicates that the election of amino acids for formula (II) will provide for peptides with more than 4 amino acid and the claims need to be amended to refer to such peptides by SEQ ID NOs: The election of particular amino acid substituents does not change the generic nature of the claims, which includes as a possible substituent D-amino acids. The Manual of Patent Examination Procedure (MPEP) indicates that the presence of one or more D-amino acids in a sequence will exclude that sequence from the scope of the sequence rules. (See MPEP, Section 2422.02 at page 2400-33, first column, fourth paragraph.)

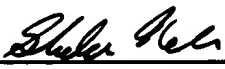
The elected "E" group is D-glutamic acid. Applicants have voluntarily provided sequences in the sequence listing for some different species with D-amino acids. New claim 23 refers to SEQ ID NOs: 103 and 104.

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Accordingly the claims are in condition for allowance. Please charge deposit account 13-2755 for fees due in connection with this amendment. If any time extensions are needed for the timely filing of the present amendment, applicants petition for such extensions and authorize the charging of deposit account 13-2755 for the appropriate fees.

Respectfully submitted,

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